IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 545 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ASHOKKUMAR SUKPALSINGH JAT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 545 of 2001

MR ASHISH M DAGLI for Petitioner No. 1 - Absent

MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 13/08/2001

ORAL JUDGEMENT

This appeal was listed for the first time before this Court on 18th July, 2001. Having heard the learned Counsel and after going through the judgement of the learned Judge, it was thought fit to call for record and

proceedings from the trial Court and the matter was kept on 6.8.2001. R&P was received, but due to sick-note of learned Counsel for the appellant - accused Shri A.M. Dagli, it was kept today. Unfortunately, once again it was mentioned today in the morning at 11.00 A.M. by Shri Jaswant Shah for Shri Dagli to adjourn this matter on the ground that today again Shri Dagli has filed sick-note. Last time it was made clear that sick-note will not be entertained in criminal matters, but in the interest of justice this matter was adjourned twice.

Present roaster started from 11th July, 2001 shall continue till 19th August, 2001. It gives an impression to the Court that the appellant accused is trying to avoid the Bench, which is not at all proper. In that view of the matter, request made by Mr. Jaswant on behalf of Mr. A,M.Dagli, learned Counsel for the appellant accused was specifically refused by this Court and it was made clear that as and when the matter is called out, it will be decided in absence of the learned Counsel for the appellant, if no alternative arrangement is made. Unfortunately, though this matter is listed at serial No.4 in the first Board, no one remained present. Considering the peculiar facts of the case, the matter is decided on the basis of the R&P received from the trial Court as well as the reasoning given by the trial Court for convicting the accused, with the due assistance of learned APP Shri ND Gohil.

The appellant accused is none else but a "House Orderly". He was posted at the official residence of the military personnel to lookafter the officer and his family members. He was tried for the offences punishable under Sections 354, 376, 511, 323, 506(2) IPC before the Court of Additional Sessions Judge, Mirzapur, Ahmedabad. After considering the evidence of the prosecution and the defence of the accused, the learned Judge found the appellant accused guilty for the offences under Sections 354, 376, 511, 323 506(2) IPC. The appellant was convicted for the offence punishable under Section 511 read with Section 376 IPC and sentenced him 3 years SI and to pay fine of Rs. 1000/-, in default to further undergo two months SI. He was also convicted for the offence under Section 323 IPC and sentenced him to suffer 3 months SI. For the offence under Section 506(2) IPC he was sentenced to suffer one year SI. All the substantive sentences were ordered to run concurrently. Set-off for the period during which he remained in jail as under-trial prisoner was given. The appellant accused is in jail since 29.1.1999 as under-trial prisoner and as convict after the judgement and order of conviction and

sentence passed by the Additional Sessions Judge on 7th July, 2001. The present appeal was filed within ten days of the order of conviction and sentence i.e. on 17th July, 2001 and it was placed for urgent orders before this Court on 18th July, 2001. However, after R&P was ordered to be called for, though the matter was listed twice before this Court, the learned Counsel for the appellant accused is not remaining present by filing sick-note.

It is the prosecution case that on 29.1.1999 in the after-noon of 3.10 P.M, the present appellant accused who was working as "House Orderly" at the place of her husband, tried to take advantage of the loneliness of Neelimaben. The accused closed the door of the house and tried to commit forcible rape on Neelimaben. She opposed that attempt and when the accused tried to insert his penis in the vagina of Neelimaben, but he discharged semen outside and thus there was no complete intercourse. In that process, the accused not only gave beating to Neelimaben, but also threatened her on the point of knife. Thereafter, he ran away. Within six hours of the incident, complaint was lodged regarding the incident. It is true that initially the complaint was under Section 354 IPC, but one could visualise the condition of the victim when such incident happened to her in absence of her husband and that too by a person who was none else but her "House Orderly". Her evidence was carefully examined by me and except some minor discrepancies, which are bound to be there in such type of cases, nothing substantial has come out in her cross-examination, which doubts her testimony. Her evidence is fully corroborated by the medical evidence. In that view of the matter, if the learned Judge found the appellant accused guilty for the offence under Section 376 read with Section 511 IPC, then this Court would certainly not interfere with such order of conviction. In fact, sentence of 3 years SI is too less in such type of cases. However, in absence of any appeal filed by the State for enhancing the sentence, I am not expressing any opinion regarding the sentence at this stage. On the point of sentence, it was urged before the trial Court that the appellant accused is a family man having 3 children and he has already undergone the sentence of more than 2 years and therefore either he may be given benefit of probation or the sentence as already undergone may be passed. The learned Judge refused both the requests made by the learned Counsel for the appellant accused in view of the fact that the offence committed by the accused was of a very serious nature. That apart, it has come on the record that the accused was literally habituated. In fact, on earlier

occasion also for similar type of mis-behaviour, he was Departmentally proceeded. In that view of the matter, there is no question of granting benefit of probation to the appellant accused or reducing the sentence. At the cost of repetition I state that sentence of 3 years SI is too less.

In view of the above discussion, this appeal fails and is summarily dismissed.

(B.J.Shethna,J.)

*/Mohandas